

REMARKS

Reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks is respectfully requested.

Claim Status/Amendment

Claims 1, 19, and 29 have been amended to more clearly define the claimed invention. Claims 2, 13, and 30 have been amended to improve the claim language. All amended claims are supported by the original specification and drawings. In detail, amended claims 1, 19, and 29 are supported at least by paragraphs 62 and 63 in the original specification. No new matter has been introduced by the foregoing amendments. Claims 1-32 are pending in the application.

Claim Rejection under 35 U.S.C. §103

Claims 1-32 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Myr (U.S. Patent No. 6,577,946). This rejection is respectfully traversed for the reasons set forth below.

In the Office Action, the Examiner admitted that Myr does not specifically disclose the using of received call data for gathering the information (see page 2, lines 3-4 from the bottom) and alleged that it would have been obvious to one of ordinary skill in the art to use call data as Myr uses call phone signal information and calls would be included in this data (see page 2, lines 1-4 from the bottom). Applicant, however, disagrees with the USPTO's position for the following reasons.

When the Patent Office has made out a prima facie case of obviousness which the PTO bears the initial burden, the burden would then shift to Applicant to rebut it. The Examiner, however, has failed to meet his burden, to produce the factual basis for the rejection of an application under section 103. In the Office Action, the Examiner has failed to provide any specific reference to the portions of the prior art where he relies on. Accordingly, the rejection is deemed inappropriate such that withdrawal of the rejection is respectfully requested. Nevertheless, in order to expedite the prosecution, Applicant submits that the claims are patentable for the reasons stated below.

Amended claim 1 now recites, *inter alia*, the feature of “A method ... determining whether a user attempts a telephone call while a car in which the user holding a mobile terminal rides enters a highway; receiving call data, necessary for performing a billing operation, ... if the user attempts the telephone call.” Applicant submits that Myr fails to disclose or teach at least this feature.

Myr at column 5, lines 49-52 discloses that “all relevant cell phone position data will be obtained directly from the cell phone network operator ***without any involvement of the individual phone user.***” In contrast, in amended claim 1, *call data are received if the user attempts the telephone call.* Thus, Myr teaches away from the claimed invention.

Further, Myr at column 6, lines 44-46 discloses that “it is time and cost effective if the data are received ***in the form of periodic*** data packets in real time.” In contrast, in amended claim 1, the call data are received ***if the user attempts the telephone call.***

Still further, because in Myr, the data is obtained periodically without any involvement of the individual phone user, the step of determining whether a user attempts a telephone call while a car in which the user holding a mobile terminal rides enters a highway doesn't have to be performed. Moreover, in amended claim 1, the received call data are the data necessary for performing a billing operation. Thus, the above features of amended claim 1 are neither disclosed nor taught by Myr.

For the reasons presented above, therefore, we believe claim 1 and its dependent claims 2-18 are patentable over Myr. Accordingly, withdrawal of this rejection of claims 1-18 is respectfully requested.

In addition, each of independent claims 19 and 29 has been amended to include the same features as those of claim 1. Therefore, Applicant submits that claims 19 and 29 and their respective dependent claims 20-28 and 30-32 are patentable over Myr. Accordingly, withdrawal of this rejection of claims 19-32 is respectfully requested.

Conclusion

All rejection having been addressed, it is respectfully submitted that claims 1-32 are in condition for allowance. Early and favorable indication of allowance is courteously solicited. If a petition for an extension of time is needed, then one is requested. Please charge any shortage in fees due in connection with the filing of this paper, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,
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